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10/505,253

08/18/2004

Iwan Roland Rasa

3909

30/593

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03/31/2009

HARNESS, DICKEY & PIERCE, P.L.C.

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EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

03/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/505,253

Applicant(s)

RASA ET AL.

Examiner

Jason Daniel Prone

Art Unit

3724

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-43, 47, 49 and 51-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-43, 47, 49 and 51-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-089)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 35-43, 47, 49, and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neveu (3,961,418) in view of De Vault (2,106,796). Please see Figure at the end of this Office action (hereafter End Figure for examiner added reference numerals to Neveu.

In regards to claim 35, Neveu discloses the same invention including a peeler for peeling in a peeling direction (Title) comprising two lateral gripping surfaces (100) interconnected by a blade (22) and by a cross-piece (102), wherein the two lateral surfaces together with the cross-piece for a substantially U-shaped holder (Fig. 2), the distance between the lateral gripping surfaces at the peeling blade is larger than a height of the peeler (See End Figure, the height is labeled H and the dimension of the peeler along line H is clearly less than the spacing between gripping surfaces S), the height is perpendicular to a longitudinal length of the gripping surfaces (H, LL) and to the distance between the gripping surfaces at the blade (H, S) and the cross-piece extends relative to the peeling direction above the peeling blade when used (orientation shown in End Figure Fig. 4).

In regards to claim 36, Neveu discloses the lateral surfaces are constructed that they may be clamped between the thumb and a finger (Fig. 2).

In regards to claims 38 and 39, Neveu discloses the crosspiece extends transversely to the peeling direction and is formed as a surface (102) and the crosspiece is vaulted concave in a direction towards the blade (102).

In regards to claim 41, Neveu discloses the lateral gripping surfaces and the crosspiece are integrally formed (100 and 102).

In regards to claims 42 and 43, Neveu discloses a gripping depression is formed into each lateral surface (14) and at least one of the lateral surfaces comprises an abutment for the blade (24).

In regards to claims 47, 49, and 52, Neveu discloses the cross-piece is flat (102 is flat on the side), the lateral surfaces and cross-piece are made from plastic (column 1 lines 60-63), and the blade and the cross-piece are arranged such that the blade is observable from above (Appendix A, Fig. 4),

However, with regards to claims, 35, 37, 40, and 51, Neveu fails to disclose the peeling blade has a cutting edge and a guiding piece, each lateral gripping surface includes a bearing for the blade, the blade is formed as a pendulum blade rotatably held at the gripping surfaces, and the peeling blade is straight.

De Vault teaches it is old and well known in the art of peelers to incorporate a peeling blade that has a cutting edge (36) and a guiding piece (37), each lateral gripping surface includes a bearing for the blade (41), the blade is formed as a pendulum blade rotatably held at the gripping surfaces (34), and the peeling blade is straight (34).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Neveu with the blade, as taught by De Vault, because the substitution of one known element for another would have yielded predictable results and all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

With regards to claim 53, the combination of Neveu in view of De Vault disclose the crosspiece (102, End Figure) extends parallel (102a, End Figure) to the blade (34 in De Vault). Regardless of shape, the crosspiece extends in every direction, including the direction parallel to the blade, since it is three dimensional

Also, Neveu fails to disclose the peeler being shorter in the peeling direction than a distance between the lateral surfaces at the peeling blade. Looking at End Figure, it would have been obvious to shrink the "PD" dimension to accommodate a hand with shorter fingers. It is old and well known to experiment/try larger and smaller size components since not everybody has the same sized/shaped body parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance between the lateral gripping surfaces at the peeling blade be larger than a length and height of the peeler, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Also, it would have been an obvious matter of design choice to have the distance between the lateral gripping surfaces at the peeling blade be larger than a length and height of the peeler,

since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Therefore, it would have been an obvious matter of design choice to modify the device of Neveu to obtain the invention as specified in claim 35. The claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

Response to Arguments

3. Applicant's arguments with respect to the dimension limitations of claims 35-43, 47, 49, and 51-53 have been considered but are moot in view of a new interpretation of the Neveu Patent.

With regards to the combination of Neveu in view of De Vault, Neveu discloses a peeler where the main function of the device is to peel only. What and how the device peels is an intended use. In light of the main function of Neveu being peeling only, it would have been obvious to substitute one type of known peeling blade for another known peeling blade.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Daniel Prone whose telephone number is (571)272-4513. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

27 March 2009

/Jason Daniel Prone/

Primary Examiner, Art Unit 3724

